IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

WP(C).No. 5663 of 2007(S)

OP.408/2006 of FAMILY COURT, MALAPPURAM
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PETITIONER:

VAIKKATH VALAPPIL ALI, S/O. KHADER KUTTY
@ BAPPU,AGED 46,R/AT VAIKKATH VALAPPIL(H),OTHALOOR
AMSOM,KOKKUR DESOM OF PONNANI TALUK,MALAPPURAM DT.
REP.BY HIS P/A HOLDER M.KUNHIMON, AGED 66,S/O.
MAMMIHAJI, R/AT MADATHIRUTHINHALI (H), OTHALUR
AMSOM,KOKKUR DESOM,PONNANI TALUK,MALAPPURAM DT.

BY ADV. SRI.AVM.SALAHUDIN

RESPONDENTS:

SUBAIDA, AGED 55 YEARS, D/O. KUNHU
MOHAMMED, KAVUNGIL HOUSE, NEAR G.H.S. KOKKUR,
P.O.KOKKUR, PONNANI TALUK, MALAPPURAM DISTRICT.

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05/06/2007, ALONG WITH WPC 16739/2007, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

APPENDIX IN WPC 5663/2007

EXT.P1-TRUE COPY OF THE PETITION DATED 25.7.2006 IN o.p.nO.408/06 OF THE FAMILY COURT, MALAPPURAM.

EXT.P2-TRUE COPY OF THE COUNTER DATED 14.10.2006 IN OP NO.408/06 FILED BY THE PETITIONER.

EXT.P3-TRUE COPY OF THE AFFIDAVIT DATED 6.2.2007 FILED IN I.A. NO.246/07 FILED BY THE PETITIONER.

EXT.P4-TRUE COPY OF THE SAID OBJECTION DATED 14.2.07 FILED BY THE RESPONDENT.

// TRUE COPY //

P.S. TO JUDGE

Kurian Joseph & T.R. Ramachandran Nair, JJ.

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W.P.(C).NOs.5663 & 16739 of 2007

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Dated this the 5th day of June, 2007

JUDGMENT

Kurian Joseph, J.

The writ petitions are filed by one and the same parties. However, it is unfortunate that the fact of filing of an earlier writ petition is suppressed in the latter and the writ petitions are filed through different counsel also.

2. The issue in both the writ petitions pertains to interlocutory applications in O.P.No.408/2006 filed by the respondent for maintenance. The petitioner who is represented by a power of attorney, disputes the marriage. It is also to be noted that it is the very same power of attorney who has filed both the writ petitions and the apprehension of the petitioner in the former writ petition was with regard to reception of certain documents and interrogatories.

3. Mr. Salahuddeen, learned counsel appearing for the petitioner in the former case submits that the grievance in that writ petition does not survive any more. As far as the relief claimed in the latter writ petition is concerned, it is seen that the petitioner filed an application for sending the register regarding the entry of marriage between the parties and the power

of attorney for comparison. The Family Court after taking note of the fact that the entry regarding the marriage in the register was on 18.4.1988 and that the powr of attorney was executed almost after 20 years, refused to entertain the petition observing that signatures are liable for variation and that no purpose will be served on such comparison. The petitioner disputes the marriage and according to him, the signature affixed in the marriage register on 18.4.1988 is not his signature. Therefore, the attempt should be to find out the genuineness of that signature. In the process, the petitioner may produce several documents before the expert for comparison. It is not necessary for the court to issue a direction to compare a signature with a time gap of around 20 years. If the petitioner disputes the entry in the register, it should be sent to an expert. It is for the expert to call for the contemporaneous or subsequent signatures, if any, available and the expert would decide whether the signature is that of the petitioner.

4. Now, he is aggrieved by the interim order declining to send the power of attorney for comparison. As already observed by us, the approach of the petitioner should have been not to send a power of attorney executed after 20 years, for comparison but to establish that the signature in the marriage register as on 18.4.1988 is not his signature. All that apart, these are all matters for the court to decide at the time of evidence. The

apprehension of the petitioner is that the observations made by the Family Court will stand in the way of the Family Court itself, if necessary, sending the register for expert opinion during the trial. We make it clear that it will be open to the court to decide whether such steps are necessary at the time of trial and the observations made in the order shall not stand in the way of such a course being adopted, if necessary.

Since the application is one for maintenance, there will be a direction to the Family Court, Malappuram to dispose of O.P.No.408/2006 filed by the respondent, within a period of six months from today.

W.P.(C) No.5663/2007 is dismissed and W.P.(C) No.16739/2007 is disposed of as above.

(Kurian Joseph, Judge.)

(T.R. Ramachandran Nair, Judge.)

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